

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** August 21, 2003

**To:** The Commission  
(Meeting of August 21, 2003)

**From:** Alan LoFaso, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **SB 521 (Bowen) Public Utilities Commission: customers**  
As Amended June 23, 2003

**Legislative Subcommittee Recommendation:** Oppose unless amended (i.e., Section 1 of the bill (the ORA section) is deleted). Support if amended (i.e., Section 1 is deleted and the amendments specified below are incorporated into the bill).

**Summary:** This bill would require the Office of Ratepayer Advocates to primarily consider the interests of residential and small commercial customers in rate design matters and make representatives of small commercial customers receiving bundled service from an electrical corporation eligible for intervenor compensation.

**Digest:** Existing law, P.U. Code §309.5, establishes the Office of Ratepayer Advocates (ORA) within the Commission and requires ORA to represent utility customer interests.

Existing law, Chapter 297, Statutes of 1984, requires the Commission to award reasonable advocate's fees, expert witness fees and other costs (intervenor compensation (IC)) associated with participation in Commission proceedings to any customer satisfying all of the following:

- The customer's participation makes a substantial contribution to the adoption of the Commission's order or decision. (P.U. Code §1803)
- Participation imposes a significant financial hardship on the customer. (P.U. Code §1803)
- The customer complies with the requirements for the notice of intent to claim compensation. (P.U. Code §1804.)

Existing law, P.U. Code §1802, defines a "customer" for the purpose of establishing eligibility for IC, to mean any of the following:

- Any participant representing consumers, customers, or subscribers of utilities under the jurisdiction of the Commission;

- Any representative authorized by a customer; or
- Any representative of a group or organization authorized to represent the interests of residential customers.

Existing law, P.U. Code §1802, specifically excludes from IC eligibility:

- Any state, federal or local government agency;
- Any publicly owned public utility; or
- Any entity in the Commission's opinion that was formed by a local government entity for the purpose of participating in a Commission proceeding.

This bill would require the Office of Ratepayer Advocates (ORA) to primarily consider the interests of residential and small commercial customer in revenue allocation and rate design matters.

This bill would authorize IC eligibility for groups or organizations that represent the interests of small commercial customers who receive bundled electric service from an electrical corporation. To be eligible, a group or organization represented must have a provision in its bylaws or articles of incorporation authorizing it to represent the interests of small commercial customers (P.U. Code §1802(b)(1)(C), as proposed to be amended).

This bill would prohibit IC eligibility for representatives of small commercial customers in electric utility matters that have a conflict arising from prior representation before the Commission, and would specifically prohibit any waiver of this conflict (proposed P.U. Code §1802.3).

This bill would define "Small Commercial Customer" as follows:

- A nonresidential customer; and
- A customer with a maximum peak demand of less than 50 kilowatts, or other criteria modifying or changing this definition that the Commission establishes by rule.

(P.U. Code §1802(h), as proposed to be amended)

**Analysis: Office of Ratepayer Advocates.** ORA is currently required to represent the interests of all customers within the jurisdiction of the Commission. This bill would require ORA to give primary consideration to the interest of residential and small commercial customers in revenue allocation and rate design matters.

ORA currently considers the effect of revenue allocation and rate design plans on residential and small commercial customers. Traditionally, ORA's analysis has focused on equitable burdens among ratepayer classes in revenue allocation by applying marginal cost pricing, a methodology which balances fairness and economic efficiency.

(See D. 96-04-050, 65 CPUC 2d 362, 407.) The approach provides for a critical analysis of revenue allocation that benefits all ratepayers. (See, e.g., D. 00-04-060, In re: SoCalGas/SDG&E, at 24-34 (Applying "rental" vis a vis "New Customer Only (NCO)"

methodologies in calculating the allocation of Long Run Marginal Cost (LRMC) of gas costs).)

ORA's participation in major proceedings, such as general rate cases (GRCs) is essential to their completion. During a time of limited resources, ORA resources (and others within the agency) are spread very thin. In GRCs, it would be advisable to reserve ORA resources for the revenue requirement phases of these proceedings and not seek to spread ORA's limited resources too thinly by expanding its work to more intensive advocacy in revenue allocation and rate design phases of proceedings.

### **Intervenor Compensation.**

There are two general sources of funding for IC awards: (1) utilities involved in proceedings are ordered by the Commission to pay awards, for which utilities are authorized to be reimbursed by ratepayers; (2) a line item in the Commission's budget.

During the period from January 2002 to February 2003, a total of \$3.67 million was awarded in intervenor compensation. Of all the recipients during this period, two groups appear to represent small business interests: California Small Business Association and California Small Business Roundtable. These two entities' bylaws authorize them to represent the interests of residential customers, rendering these organizations eligible for IC under current law.

According to the Commission's report entitled Intervenor Compensation Decisions Annotated Bibliography 2001, \$1.28 million was awarded to a total of seven individuals or groups. None of these intervenors appear to be representatives of small businesses.

It is unclear what impact this bill would have on the number of requests for IC sought by small commercial customers. In the past two years, small business participation in the IC program has been minimal.

However, the bill may create a number of unintended IC eligibility opportunities, creating significant workload issues for the Commission if clear eligibility requirements are not clearly established in statute.

Conflicts within the group or organization: The bill simply requires the group or organization to be authorized "pursuant to its articles of incorporation or bylaws...to represent small commercial customer..." to be eligible for IC. However, the group may have arrangements that are not articulated in its articles of incorporation or bylaws that conflict with the interests of small commercial customers. For example, the group might also include members from other customer classes whose interests compete with those of small commercial customers. Moreover, small commercial customers may constitute less than a majority of the group's membership, or a source of the group's financial support may come from an entity or entities with interests that are not entirely consistent with small commercial customers.

In order to protect the integrity of ratepayer-funded representation of small commercial customers before the Commission, IC eligibility should be prohibited to representatives of groups or organizations where small commercial customers constitute less than a majority of the total membership or in cases where the financial support from small commercial customers constitutes less than a majority of the total financial support to the group.

Organizations advocating more than one point of view: An organization primarily representing large businesses, as measured by majority membership or majority financial support, should not be eligible for IC funding for the reasons described above.

Moreover, an organization that advocates multiple interests in the same proceeding should also not be eligible for an IC award. Advocating contrary interests represents and inherent conflict. In cases where the multiple interests coincide, seeking IC funds for the same arguments applied to small commercial customers and other interests is incompatible with the “substantial contribution” requirement for IC funding. Therefore, SB 521 should contain a *per se* prohibition on applying for IC awards applicable to an organization advocating the interests of another class of customers that are not eligible for intervenor awards

Utility representation in small business organizations: Utility funding or support of a small business organization should render that organization ineligible for small commercial customer intervenor awards. Potential linkage between utilities and small business advocates is incompatible with the goals of a ratepayer-funded compensation system.

Organizations with indirect interests in Commission decisions that exceed those of an ordinary ratepayer: Current statute empowers the Commission to reject IC award applications from entities formed to represent the interests of local governments. Local governments may not apply for an IC award. By the same token, organizations formed for the purpose of representing local government may not apply either.

As a direct analogue to this provision, SB 521 should authorize the Commission to exclude any organization that, in the Commission’s opinion, was formed for the purpose of funding participation of a utility-funded organization or an organization with a member with a direct financial interest in a Commission proceeding. This provision would give the Commission clear, express authority to bar organizations that, according to its own judgment, are incompatible with the interests of encouraging *bond fide* small business representation at the Commission, funded by ratepayers.

## RECOMMENDED AMENDMENTS

1. Strike Section 1 of the bill, relating to ORA.
2. On page 4, line 35-39, amend, as follows:

(2) "Customer" does not include ***any of the following:***

**(A)** any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.

**(B) A representative of a group or organization authorized to represent small commercial customers who receive bundled electric service from an electrical corporation under any of the following conditions:**

- (i) Less than a majority of the group's or organization's membership is comprised of small commercial customers, as defined in subdivision (h).**
- (ii) Less than a majority of the group's or organization's financial support comes from small commercial customers, as defined in subdivision (h).**

**(C) any group or organization that, in the commission's opinion, was established or formed by an interest regulated by the commission or party or parties that may be awarded any funds by the commission, except compensation described in subdivision (a), for the purpose of participating in a commission proceeding.**

## LEGISLATIVE HISTORY

Assembly Floor: 78-0 (return to Senate for Concurrence) (8/18/03)

Assembly Approps: 22-0 (do pass) (7/16/03)

Assembly U.&C.: 13-0 (do pass as amended) (6/16/2003)

Senate Floor: 39-0 (passed to the Assembly) (5/12/2003)

Senate Appropriations: 10-0 (do pass) (5/05/2003)

Senate E.U.&C: 8-0 (do pass) (4/08/2003)

## SUPPORT/OPPOSITION

Support: California Small Business Association.

Opposition: California Manufacturers & Technology Association (unless amended); Sempra Energy (unless amended).

## LEGISLATIVE STAFF CONTACT

Carlos A. Machado, Deputy Legislative Director  
CPUC-OGA

cm2@cpuc.ca.gov  
(916) 327-1417

Alan LoFaso, Legislative Director  
CPUC-OGA

[alo@cpuc.ca.gov](mailto:alo@cpuc.ca.gov)  
(916) 327-7788

**Date:** August 21, 2003

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Attachment

**BILL LANGUAGE:**

BILL NUMBER: SB 521      AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY JUNE 23, 2003  
AMENDED IN SENATE APRIL 1, 2003

INTRODUCED BY Senator Bowen

FEBRUARY 20, 2003

An act to amend Sections 309.5 and 1802 of, and to add Section 1802.3 to, the Public Utilities Code, relating to public utilities.

## LEGISLATIVE COUNSEL'S DIGEST

SB 521, as amended, Bowen. Public Utilities Commission: customers.

(1) Existing law creates a division within the Public Utilities Commission to represent the interests of public utility customers and subscribers within the jurisdiction of the commission.

This bill would provide that for revenue allocation and rate design matters, the division would be required to primarily consider the interests of residential and small commercial customers.

(2) Existing law provides compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers for participation or intervention in any proceeding of the commission. Existing law defines "customer" in part to include any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential electrical, gas, telephone, telegraph, or water corporation customers.

This bill would also include within the definition of "customer" any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of small commercial customers, *as defined by a certain peak demand threshold*, who receive bundled electric service from an electrical corporation. The bill would prohibit a representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation from being eligible for an award of compensation if the representative has a conflict arising from prior representation before the commission.

*The bill would authorize the commission to modify or change the definition of "small commercial customer," to promote participation in commission proceedings by organizations representing small businesses.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 309.5 of the Public Utilities Code is amended to read:

309.5. (a) There is within the commission a division to represent the interests of public utility customers and subscribers within the

jurisdiction of the commission. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the division shall primarily consider the interests of residential and small commercial customers. The amendments made to this section by Chapter 440 of the Statutes of 2001 are not intended to expand the representation and responsibilities of the division.

(b) The director of the division shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by the Senate. The director shall annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the division.

(c) The commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the division. The division may employ experts necessary to carry out its functions.

Personnel and resources shall be provided to the division at a level sufficient to ensure that customer and subscriber interests are fairly represented in all significant proceedings.

(d) The commission shall develop appropriate procedures to ensure that the existence of the division does not create a conflict of roles for any employee or his or her representative. The procedures shall include, but shall not be limited to, the development of a code of conduct and procedures for ensuring that advocates and their representatives on a particular case or proceeding are not advising decisionmakers on the same case or proceeding.

(e) The division may compel the production or disclosure of any information it deems necessary to perform its duties from entities regulated by the commission provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission if there is no assigned commissioner.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. Moneys from the Public Utilities Commission Utilities Reimbursement Account in the General Fund shall be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account. The funds in the Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the division in the performance of its duties. The commission shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

(g) On or before January 10 of each year, the commission shall provide to the chairperson of the fiscal committee of each house of the Legislature and to the Joint Legislative Budget Committee all of the following information:

(1) The number of personnel years assigned to the Office of Ratepayer Advocates.

(2) The total dollars expended by the Office of Ratepayer Advocates in the prior year, the estimated total dollars expended in the current year, and the total dollars proposed for appropriation in the following budget year.

(3) Workload standards and measures for the Office of Ratepayer Advocates.

(h) The division shall agree to meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged misconduct, or a violation of a law or a commission rule or order, raised by the division in a complaint. The meet and confer process shall be utilized as an informal means of attempting to reach resolution or consensus on

issues raised by the division regarding any regulated entity in the complaint proceeding.

SEC. 2. Section 1802 of the Public Utilities Code is amended to read:

1802. ~~—(a)—~~ *As used in this article:*

(a) "Compensation" means payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

~~—(b) "Customer" means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or small commercial customers who receive bundled electric service from an electrical corporation, but does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.~~

(b) (1) "Customer" means any of the following:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative who has been authorized by a customer.

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.

(2) "Customer" does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.

(c) "Expert witness fees" means recorded or billed costs incurred by a customer for an expert witness.

(d) "Other reasonable costs" means reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customer that resulted in a substantial contribution.

(e) "Party" means any interested party, respondent public utility, or commission staff in a hearing or proceeding.

(f) "Proceeding" means an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.

(g) "Significant financial hardship" means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(h) "Small commercial customer" means any nonresidential



customer with a maximum peak demand of less than 50 kilowatts. The commission may establish rules to modify or change the definition of "small commercial customer," including use of criteria other than a peak demand threshold, if the commission determines that the modification or change will promote participation in proceedings at the commission by organizations representing small businesses, without incorporating large commercial and industrial customers.

(i) "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

SEC. 3. Section 1802.3 is added to the Public Utilities Code, to read:

1802.3. A representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation shall not be eligible for an award of compensation pursuant to this article if the representative has a conflict arising from prior representation before the commission. This conflict may not be waived.

SEC. 4. The Legislature finds and declares all of the following:

(a) The intervenor compensation program allows for participation by organizations representing small businesses so that those businesses have a voice at the commission.

(b) The commission will evaluate and may revise the 50 kilowatt peak demand threshold, if doing so will further the purposes of the act adding this section.

(c) If the commission revises the threshold for a small commercial customer, it may consider criteria other than electricity demand, including number of employees.

(d) When the commission evaluates implementation of this expanded program, the commission should ensure that large commercial and industrial customers are not inadvertently included in the program.

(e) The act adding this section does not alter the commission's implementation of the requirement of intervenor compensation that may be granted only if the participation resulted in a substantial contribution to the proceeding, and only if intervention without an award of fees or costs imposes a significant financial hardship.